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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,593	12/04/2000	Florence P. Haseltine	12000-002001	3653

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EXAMINER

RHODE JR, ROBERT E

ART UNIT PAPER NUMBER

3625

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,593

Applicant(s)

HASELTINE, FLORENCE P.

Examiner

Rob Rhode

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1- 4, 6 - 19, 21 - 24, 26 - 38, 41 - 44, 46 - 58 and 61 - 96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1- 4, 6 - 19, 21 - 24, 26 - 38, 41 - 44, 46 - 58 and 61 - 96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant amendment of 3-2-04 amended claims 1 - 4, 6 - 15, 18, 21 - 24, 26 - 31, 33 - 35, 38, 41 - 44, 46 - 55 and 58 and canceled claims 5, 19, 20, 25, 39, 40, 45, 59 and 60 as well as added new claims 61 - 96. In addition, the applicant traversed rejections of Claims 1 - 60.

Currently, claims 1- 4, 6 - 18, 21 - 24, 26 - 38, 41 - 44, 46 - 58 and 61 - 96 are pending.

Drawings

The drawings filed on 12/04/2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 10, 29, 30, 49 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In these claims, they refer to

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and are dependent from Claims that were canceled by the applicant. Thereby, these claims are indefinite. The claims have been interpreted as follows: Claim 9 depending from claim 1, Claim 10 depending from claim 1, claim 29 depending from claim 26, claim, 30 depending from claim 26, claim 49 depending from 46 and claim 50 depending from claim 46.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 65 is rejected under 35 U.S.C. 112, second paragraph, for having conflicting structural classes. For example, claim 65 is dependent from a method claim and yet claim 65 is recited as a medium claim. For examination purposes, claim 65 has been interpreted as depending from claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 – 8, 10, 21, 26 – 28, 30, 41, 46 – 48, 50, 61 – 67, 71, 72, 75, 77, 81, 82, 85, 87, 91 – 92 and 95 are rejected under 35 U.S.C. 102(b) as being unpatentable over Harada (US 5,551,021).

Regarding claim 1 (Currently Amended) and related claim 67 (New), Harada teaches a method for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising:

providing a consumer with access to physical merchandise at a merchant's physical premises (see at least Abstract, Col 8, lines 55 - 58 and Figure 13B);

allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises (see at least Col 8, lines 55 – 58 and Figure 13B);

capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer (see at least Figures 1 and 13B);

loading the captured image onto a merchant system (see at least Abstract, Col 2, lines 1 - 7 and Figure 1);

providing a device with access to the merchant system (see at least Abstract and Figures 1 – 3); and

enabling a party who is operating, the device to access and view the captured image (see at least Abstract and Figures 1 – 3).

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Regarding claim 6 (Currently Amended) and related claims 26, 46, 72, 82 and 92, Harada teaches a method, wherein the captured image reflects a relationship between the physical merchandise and the consumer (Figure 13B).

Regarding claim 7 (Currently Amended) and related claims 27 and 47, Harada teaches a method, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment (Figure 13B).

Regarding claim 8 (Currently Amended) and related claims 28 and 48, Harada teaches a method, wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool. Please note that the recitation, "wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "captured image" already disclosed by Harada.

Regarding claim 10 (Currently Amended) and related claims 30 and 50, Harada teaches a method, further comprising storing the captured image in the merchant system for later access by the device (Col 2, lines 21 – 23).

Regarding claim 61 (New), Harada teaches a method, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the

consumer to provide instructions to a third party regarding the physical arrangement of the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 – 6, Col 8, lines 55 - 58 and Figure 13B and E).

Regarding claim 62 (New), Harada teaches a method, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to physically interact with the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 – 6, Col 8, lines 55 - 58 and Figure 13B).

Regarding claim 63 (New), Harada teaches a method wherein capturing an image of the physical merchandise as physically arranged according to the consumer comprises capturing an image of the consumer physically interacting with the physical merchandise (Col 8, lines 55 – 58 and Figure 13B).

Regarding claim 64 (New) and related claims 75, 85 and 95, Harada teaches a method wherein allowing the consumer to physically interact with the physical merchandise comprises allowing the consumer to wear the physical merchandise (Col 8, lines 55 – 58 and Figure 13B).

Regarding claim 65 (New) and related claim 66, Harada teaches a method, wherein the consumer being allowed to direct physical arrangement of the physical merchandise comprises the consumer being allowed to physically interact with the physical

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merchandise, and wherein the capturing code segment comprises a code segment to capture an image of the consumer physically interacting with the physical merchandise (Figure 13 D).

Regarding claim 71 (New) and related claims 81 and 91, Harada teaches a method, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according by a consumer, the method further comprising: providing the consumer with the physical merchandise at a merchant's physical premises (Figure 13B and E); and allowing the consumer to physically arrange the physical merchandise (Figure 13B).

Regarding claims 21 and related claim 77 as well as claims 41 and 87, these claims are also rejected and the reference sections used for claims 1 and related claim 67 apply.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 – 4, 9, 11 – 18, 22 – 24, 29, 31 – 38, 42 – 44, 49, 51 – 58, 68 – 70, 73, 74, 76, 78 – 80, 83, 84, 86, 88 – 90, 93, 94 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada (US 5,551,021) in view of Watanabe (US 6,578,072 B2).

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Harada substantially discloses and teaches the applicant's invention.

However, Harada does not specifically disclose and teach a method, wherein the device is physically remote from the merchant's physical premises; wherein the captured image includes one or more still photos; wherein the digital-captured image includes a video clip; wherein the enabling a party who is operating the device to access and view the captured image comprises enabling the party who is operating the device to access and view the captured image in real time; wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device party is not authenticated properly; wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer; wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured images from the merchant; further comprising receiving feedback from the party; wherein the feedback includes authorization for purchase of the physical merchandise and wherein the feedback includes a recommendation for purchase as well wherein the consumer and party are a single entity; and wherein the consumer and party are different entities.

On the other hand and regarding claim 2 (Currently Amended) and related claims 22 and 42, Watanabe teaches a method, wherein the device is physically remote from the merchant's physical premises (Figures 1 and 6).

Regarding claim 3 (Currently Amended) and related claims 23 and 43, Watanabe teaches a method, wherein the captured image includes one or more still photos (Figure 2).

Regarding claim 4 (Currently Amended) and related claims 24 and 44, Watanabe teaches a method, wherein the digital-captured image includes a video clip. Please note that the recitation "wherein the digital-captured image includes a video clip", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "captured image" already disclosed by Watanabe.

Regarding claim 9 (Currently Amended) and related claims 29 and 49, Watanabe teaches a method, wherein the enabling a party who is operating the device to access and view the captured image comprises enabling the party who is operating the device to access and view the captured image in real time (Abstract and Figures 1 and 2). Please note that Watanabe does not refer to real time but does address viewing captured images. However, the viewing of captured images and streaming video was old and well known at the time of the invention and used in Web cast. Therefore, it

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would have been obvious to one of ordinary skill to have provided the method of Watanabe with real time capability. In this manner, the individuals could have in real time allowed movement of the individual in order to view all sides or parts of the merchandise. In this manner, the customer's satisfaction will be increased with the added capability of movement and thereby would have increased the probability that they will return for additional shopping in the future.

Regarding claim 11 (Currently Amended) and related claims 31, 51, 73, 83 and 93, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device party is not authenticated properly (Col 1, lines 25 – 37) and [12 (Currently Amended) and related claims 32, 52, 74, 84 and 94] wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer (Col 1, lines 34 – 37).

Regarding claim 13 (Currently Amended) and related claims 33 and 53, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured images from the merchant (Figures 1, 2 and 6).

Regarding claim 14 (Currently Amended) and related claims 34, 54, 70, 76, 80, 86, 90 and 96, Watanabe teaches a method, further comprising receiving feedback from the party (Figure 8) and [15 (Currently Amended) and related claims 35, 55, 68, 78 and 88], Watanabe teaches a method, wherein the feedback includes authorization for purchase of the physical merchandise and [16 (Original) and related claim 36, 56, 69, 79 and 89] wherein the feedback includes a recommendation for purchase (Figure 8). Please note that recitations "wherein the feedback includes authorization for purchase of the physical merchandise" and "wherein the feedback includes a recommendation for purchase", such recitation are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "feedback" already disclosed by Watanabe.

Regarding claim 17 (Original) and related claims 37 and 57, Watanabe teaches a method wherein the consumer and party are a single entity (Abstract).

Regarding claim 18 (Currently Amended) and related claims 38 and 58, Watanabe teaches a method, wherein the consumer and party are different entities (Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method, medium and apparatus of Harada with the method, medium and apparatus of Watanabe for providing a device with access to the merchant system with electronic access to an image of merchandise physically arranged

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according to a consumer, the method comprising: providing a consumer with access to physical merchandise at a merchant's physical premises; allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises; capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer; loading the captured image onto a merchant system; providing a device with access to the merchant system; and enabling a party who is operating, the device to access and view the captured image – in order to provide the consumer with the ability to try on clothes, have image captured and stored for reference. Harada discloses method, medium and apparatus a merchant method and system, which discloses capturing of an image, loading a captured image and allowing a device access and viewing of captured images (Abstract). Watanabe in turn discloses a method, medium and apparatus to remotely access and to view captured images' (Figures 1 – 6). Therefore, one of ordinary skill in the art would have been motivated to combine Harada with Watanabe in order to have a method, medium and apparatus disclosing the capturing of an image of a consumer with tried on merchandise, loading the captured image and allowing device both local and remote access and viewing of captured images. In this manner, the consumer as well as others can view the captured image of the consumer. Thereby, the method and system will increase customer satisfaction by allowing feedback, storing for future reference and approval if required. The increased customer satisfaction will increase the probability that the consumer as well as others will use the merchant in future for satisfying shopping needs – both online and offline.

Response to Arguments

Applicant's arguments with respect to claims 1 - 60 have been considered but are moot in view of the new ground(s) of rejection. As noted, the applicant's arguments are focused only on the wording of the amended claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **(703) 305-8230**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeff Smith** can be reached on **(703) 308-3588**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

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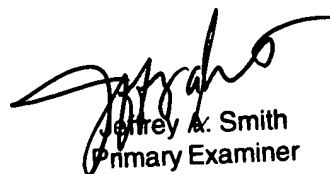
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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

RER


Jeffrey A. Smith
Primary Examiner